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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 KAREN MARTINEZ,

10 Plaintiff,

11 v.

12 PIERCE COUNTY, *et al.*,

13 Defendants.
14

Case No. C22-5919RSL

ORDER DENYING MOTION
TO DISMISS & GRANTING
LEAVE TO AMEND

15 This matter comes before the Court on defendants’ “Motion to Dismiss Pursuant to FRCP
16 12(b)(6)” (Dkt. # 6) and plaintiff’s motion to amend her complaint (Dkt. # 11).

17 Plaintiff filed her initial *pro se* complaint, alleging § 1983 claims stemming from the tax
18 sale of real property, on November 28, 2022. Dkt. # 1. On February 15, 2023, defendants filed a
19 motion to dismiss under Rule 12(b)(6). Dkt. # 6. On March 8, 2023, plaintiff filed a motion for
20 leave to file an amended complaint, to which she attached a proposed amended complaint. Dkt.
21 # 11.

22 **I. Motion for Leave to Amend**

23 Plaintiff asks the Court to grant her leave to amend her complaint. Dkt. # 11. However,
24 under Federal Rule of Civil Procedure 15(a)(1)(B), “[a] party may amend its pleading once as a
25 matter of course within . . . 21 days after service of a motion under Rule 12(b).” Fed. R. Civ. P.
26 15(a)(1)(B). Here, plaintiff filed her motion to amend, which included her proposed amended
27 complaint, within 21 days of defendants’ motion to dismiss. *See* Fed. R. Civ. P. 6(a)(1) (rules
28 for computing time). A motion for leave to amend thus was unnecessary. *See Sparling v.*

ORDER DENYING MOTION TO DISMISS &
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1 *Hoffman Const. Co., Inc.*, 864 F.2d 635, 638 (9th Cir. 1988) (holding that a plaintiff’s motion
2 for leave to amend was “unnecessary” because the plaintiff could have amended without leave
3 of court). When a plaintiff makes an unnecessary request for leave to amend in such
4 circumstances, the Ninth Circuit has instructed that the district court should grant it. *Id.* “When a
5 party has the ability to amend a pleading as a matter of course, but nevertheless requests
6 permission to amend, the party’s right to amend is not lost and the court is obliged to grant such
7 unnecessary requests.” *Hill v. Clovis Police Dep’t*, No. C11–1391AWI-SMS, 2011 WL
8 5828224, at *9 (E.D. Cal. Nov. 18, 2011) (citing *Sparling*, 864 F.2d at 638). Accordingly, the
9 Court grants plaintiff’s motion. Plaintiff’s amended complaint located at Dkt. # 11 is now the
10 operative pleading in this matter.

11 **II. Motion to Dismiss**

12 An amended complaint supersedes the original, the latter being treated thereafter as non-
13 existent. *Ramirez v. Cnty. of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015) (“It is well-
14 established in our circuit that an ‘amended complaint supersedes the original, the latter being
15 treated thereafter as non-existent.’” (citations omitted)). Consequently, plaintiff’s amended
16 complaint supersedes the original complaint. Because defendants’ motion to dismiss targets the
17 original complaint, which is no longer in effect, the motion to dismiss is deemed moot. *Id.*
18 (“Because the Defendants’ motion to dismiss targeted the Plaintiff’s First Amended Complaint,
19 which was no longer in effect, we conclude that the motion to dismiss should have been deemed
20 moot . . .”).

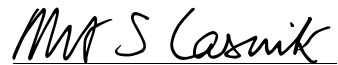
21 **III. Conclusion**

22 For all the foregoing reasons:

- 23 1. Defendants’ motion to dismiss (Dkt. # 6) is DENIED as moot.
- 24 2. Plaintiff’s motion for leave to amend (Dkt. # 11) is GRANTED. Plaintiff’s amended
25 complaint located at Dkt. # 11 is now the operative pleading in this matter.
- 26 3. Plaintiff’s motion for leave to file a surreply (Dkt. # 15) is DENIED.

1 IT IS SO ORDERED.

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3 DATED this 30th day of May, 2023.

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6 Robert S. Lasnik
7 United States District Judge
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